

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 11th day of September, Two thousand and six.

PRESENT:

HON. DENNIS JACOBS,
HON. ROBERT D. SACK,
HON. BARRINGTON D. PARKER,
Circuit Judges.

Josef Haryanto,

Petitioner,

-v.-

No. 05-0480-ag
NAC

Alberto R. Gonzales,¹

Respondent.

FOR PETITIONER: Yuming Wang, Wynnewood, Pennsylvania.

FOR RESPONDENT: Sehldon J. Sperling, United States Attorney for the Eastern District of Oklahoma, Jeanette Windsor, Assistant United States Attorney, Muskogee, Oklahoma.

UPON DUE CONSIDERATION of this petition for review of the Board of Immigration

¹Pursuant to Federal Rule of Appellate Procedure 43(c)(2), Attorney General Alberto R. Gonzales is automatically substituted for former Attorney General John Ashcroft as the respondent in this case.

1 Appeals (“BIA”) decision, it is hereby ORDERED, ADJUDGED, AND DECREED that the
2 petition for review is DISMISSED.

3 Josef Haryanto, through counsel, petitions for review of the January 2005 BIA decision
4 affirming the September 2003 decision of Immigration Judge (“IJ”) Barbara Nelson, denying
5 Haryanto’s applications for asylum, withholding of removal, and relief under the Convention
6 Against Torture (“CAT”). We assume the parties’ familiarity with the underlying facts and
7 procedural history.

8 Where the BIA summarily affirms the decision of the IJ, this Court reviews the IJ’s
9 decision as the final agency determination. *See, e.g., Twum v. INS*, 4112 F.3d 54, 58 (2d Cir.
10 2005). The IJ’s findings of fact will be upheld if supported by substantial evidence. 8 U.S.C. §
11 1252(b)(4)(B); *Zhou Yun Zhang v. INS*, 386 F.3d 66, 73 & n.7 (2d Cir. 2004).

12 The IJ found petitioner’s asylum application to be untimely. We have no jurisdiction to
13 review such a finding. *Chen v. U.S. Dep’t of Just.*, 434 F.3d 144, 154 (2d Cir. 2006). Haryanto
14 argues that IJ erred in denying application for asylum, claiming that he “deserv[es] a favorable
15 exercise of discretion.” But this Court lacks jurisdiction to review discretionary decisions of the
16 IJ. *Id.*

17 Petitioner has not challenged the denial of withholding of removal or relief under CAT.

18 For the foregoing reasons, the petition for review is DISMISSED for lack of jurisdiction.
19 Having completed our review, any stay of removal that the Court previously granted in this
20 petition is VACATED, and any pending motion for a stay of removal in this petition is DENIED
21 as moot. Any pending request for oral argument in this petition is DENIED in accordance with
22 Federal Rule of Appellate Procedure 34(a)(2), and Second Circuit Local Rule 34(d)(1).

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FOR THE COURT:
Roseann B. MacKechnie, Clerk

By: _____
